Supreme Court, U.S.
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No. 01-1469

(5)

In the Supreme Court of the United States

HEARTLAND BY-PRODUCTS, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

- AND -

UNITED STATES BEET SUGAR ASSOCIATION,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

SUPPLEMENTAL BRIEF FOR THE PETITIONER

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SUPPLEMENTAL BRIEF FOR THE PETITIONER

Pursuant to Rule 15.8 of the Rules of this Court, Petitioner Heartland By-Products, Inc. hereby submits its views regarding the legislative enactment to which the Government refers in its letter to the Court dated August 9, 2002. On August 6, 2002, the Trade Act of 2002 became law. *See* Trade Act of 2002, Pub. L. 107-210, 116 Stat. 933 (2002) (the "Act"). Although one section of the Act relates to the classification of Heartland's sugar syrup, the Act has no bearing on the question presented in the petition. Because the need for further review remains acute, both for Heartland and for the trade community generally, the petition should be granted.

1. The Act was widely discussed and debated because of its controversial grant of broad trade promotion authority to the President and its renewal and expansion of various major U.S. trade programs, such as trade adjustment assistance, Andean trade preferences, and the Generalized System of Preferences. But "tucked neatly away" in the 117-page statute, 148 CONG. REC. S4326 (daily ed. May 14, 2002) (statement of Sen. Baucus), is a short provision, Section 5203, fulfilling a far narrower agenda. That provision codifies the reclassification of Heartland's sugar syrup that was announced by the Customs Service in 1999, invalidated by the Court of International Trade ("CIT"), and eventually upheld by the Court of Appeals for the Federal Circuit.

Specifically, Section 5203 amends the Harmonized Tariff Schedule of the United States ("HTSUS") by specifying that molasses is a "foreign substance[ ]" within the meaning of HTSUS 1702.90. As Congress recognized, *see* H.R. CONF. REP. NO. 107-624, 107th Cong., 2d Sess., at 264-265 (2002), and as the Federal Circuit acknowledged in the decision below, Pet. App. 16a, HTSUS 1702.90 did not previously state that molasses is encompassed by the term "foreign substances." The newly amended language expressly provides that a tariff-rate quota ("TRQ") applies to sugar syrups "[c]ontaining soluble

non-sugar solids (excluding any foreign substances, *including but not limited to molasses,* that may have been added *to* or developed in the product) equal to 6 percent or less by weight of the total soluble solids." H.R. CONF. REP. NO. 107-624, at 117 (new language in italics). The Conference Report, *id.* at 265, explains that the legislative purpose was to

> make clear in the statute an important element of the ruling of the Court of Appeals for the Federal Circuit in *Heartland By-Products, Inc. v. United States*, 264 F.3d 1126 (Fed. Cir. 2001), i.e., that molasses is one of the foreign substances that must be excluded when calculating the percentage of soluble non-sugar solids under [HTSUS] 1702.90.40.

By subjecting sugar syrups such as Heartland's to a TRQ, Section 5203 effectively forecloses Heartland from importing its sugar syrup in the future. The legislative action does not, and must not, however, foreclose this Court's consideration of the crucial legal issues raised by the petition.

2. The question presented in the petition is whether the Federal Circuit, contrary to longstanding principles of classification law established by this Court, correctly upheld a Customs ruling that rested not on the condition of an article upon importation but on the article's post-importation use and that rejected the importer's entitlement to fashion the article so as to enjoy favorable tariff treatment. Section 5203 amends HTSUS 1702.90, but it does not amend the principles at issue. Congress did not address, let alone alter, the principle that goods are classified in accordance with their condition as imported, regardless of their post-importation use. Nor did Congress nullify the principle that an importer is entitled to fashion its product so as to enjoy favorable tariff rates. After the enactment of the Act, as before its enactment, the Federal Circuit's decision stands as binding precedent for an approach to the classification of merchandise that is directly at odds with the decisions of this Court.

Accordingly, this Court's review of the Federal Circuit decision remains a matter of profound significance to the wider trade community. The two principles of classification law that the Federal Circuit failed to acknowledge are the very principles that have shaped the operations and expectations of U.S. importers, their suppliers, and their customers every day for over a century. *See* Pet. 25-29; Reply Brief for the Petitioner 9-10. If these principles may now be disregarded at will by Customs and the courts, then the trade community will have lost the "certainty and impartiality in administration which should preeminently characterize the operation of tariff laws." *United States v. Citroen*, 223 U.S. 407, 424 (1912). Regardless of the future classification of particular sugar syrups, action by this Court is essential to restore the foundation of classification law that has been undermined by the Federal Circuit.

3. Moreover, the case or controversy over the question presented remains very much alive. Based on the Federal Circuit's decision, Customs has claimed that Heartland owes tens of millions of dollars in TRQ duties on imports predating the Federal Circuit's reversal of the CIT. Although the new statute establishes the classification of future importations of sugar syrups like Heartland's, it does not resolve the classification of those sugar syrups prior to the amendment of the HTSUS.[1]

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[1] While amending HTSUS 1702.90 in Section 5203 of the Act, Congress also amended HTSUS 9902.84.02 in Section 5202 to make the importation of certain boilers duty-free. Congress expressly made the latter amendment effective retroactively to January 1, 2002. H.R. CONF. REP. NO. 107-624, at 116. No such retroactive effective date was set forth for Section 5203. *See Martin v. Hadix*, 527 U.S. 343, 361 (1999) (adhering to the normal "assumption that statutes are prospective, in the absence of an express command by Congress to apply the [statute] retroactively"); *Landgraf v. USI Film Prods.*, 511 U.S. 244, 284 (1994) (observing that the Court had never, in any case "in which Congress had not clearly spoken, . . . read a statute substantially increasing the monetary liability of a private party to apply to conduct occurring before the statute's enactment").

Thus, not only the viability of this Court's precedents but also the liability of Heartland for substantial duties may hinge on this Court's determination whether the Federal Circuit decision is tenable.[2]

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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[2] *See City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 478 n.1 (1989) (although ordinance challenged by plaintiff had since expired, case was not moot because parties continued to dispute whether plaintiff was entitled to damages based on prior application of allegedly unlawful ordinance); *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 8 (1978) (although parties had resolved their dispute over how utility bills were to be calculated, an Article III controversy remained with respect to utility customers' claim for actual and punitive damages based on temporary termination of their utility service).